IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 42 of 1998.

Judgement reserved on: 1.10.2007

Date of decision: October 10, 2007.

State Bank of Patiala ….. Appellant.

Vs.

Joginder Singh & ors. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. K.D.Sood, Advocate.

For the Respondents : Mr. N.K.Thakur, Advocate.

Kuldip Singh, Judge.

The appellant-bank has assailed the judgement, decree dated 1.12,1997, passed by the learned District Judge, Una, in Civil Suit No. 160 of 1993, partly decreeing the suit of the plaintiff. The facts in brief are that appellant originally filed a suit in this court on 20.9.1993, for recovery of Rs.3,23,930.70 alongwith costs and interest at the rate of 12.5% per annum with quarterly rests against the respondents with further prayer for passing a decree for the sale of mortgaged property mentioned in para-4 of the plaint after giving respondents reasonable time to make payment and in case the sale proceeds are found short of the decretal amount, preliminary decree

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

for recovery of amount from other properties of the respondents be also passed.

2. The further case of the appellant is that respondent No.1 applied to the appellant-bank for a term loan to the tune of Rs. 2,30,000/- vide application dated 29.8.1987. The bank sanctioned the term loan to respondent No. 1, a sum of Rs.1,90,000/- was advanced to respondent No. 1 on 28.3.1988 and an amount of Rs. 40,000/- was encashed by him on 1.7.1988. The loan was taken by respondent No.1 for purchase of truck No. HIU 4539 and the loan was guaranteed by respondents No. 2 to 5. Respondent No.1 executed letter of arrangement, agreement of medium term loan and also deed of guarantee, dated 25.2.1988. The respondent No.2 being guarantor, created on 11.3.1988 an equitable mortgage of his land comprised in khata No. 30/90, Kitas 25, measuring 57 Kanals 15 Marlas. It was agreed that respondent No.1 will pay interest @4% below the State Bank of India Advance rate rising and falling per annum with quarterly rests. The amount of loan was payable in 58 monthly instalments. The respondent No.1 defaulted the payment of the loan. He executed balance confirmation letters on 5.4.1990 and 9.1.1991. The respondent paid some amount in between, but failed to clear the loan despite notices, dated 23.8.1993 and 26.10.1992. After adjusting various payments made towards loan account by respondent No.1, a sum of Rs. 3,23,930.70 remained due to appellant- bank against respondents on 17.9.1993, for this amount, the appellant- bank filed the suit.

3. The suit was contested by respondents No. 1, 2, 3 and 5, on the grounds of maintainability, limitation, estoppel and non-availability of cause of action. On merits, the defence of the respondents is that they had paid the entire loan amount. They have asserted that an amount of Rs. 2,50,000/- was paid by them after filing the suit. They have denied the execution of balance confirmation letters. They denied the rate of interest, as alleged by the plaintiff- Bank. They ultimately denied the claim set up by the appellant. The suit was transferred to learned District Judge, Una on 20.3.1995. The learned District Judge decreed the suit of the appellant- Bank on 1.12.1997 and a decree of Rs.1,30,647.10 with proportionate costs and interest at the rate of 12.5% per annum with quarterly rests till the realization of the decretal amount was passed. It has further been directed that interest after 18.9.1993, shall be calculated by plaintiff- Bank at the rate of 12.5% per annum with quarterly rests and the statement of account shall be prepared in accordance with the same. The payments made by respondent after this date shall be adjusted and the balance amount, if any, due against him shall be recovered. If the respondent, who is alleged to have made payment to the extent of Rs. 4,03,916.00, is found to have been made any excess payment, then the same shall be refunded to him.

4. I have heard the learned counsel for the parties and gone through the record.

5. The learned counsel for the appellant has submitted that learned District Judge has passed a vague decree, he has not

determined amount due to the appellant from respondents, everything has been left to be determined by the parties. It has been submitted further that learned District Judge has ordered nothing about the mortgaged property. The learned counsel for the respondents has submitted that nothing is payable to the appellant-bank, according to him excess payment has been made by the respondents.

6. The appellant-bank in the plaint has made the following prayer.

> "It is therefore, prayed that a decree for Rs. 3,23,930.70 alongwith costs and interest @ 19.5% per annum with quarterly rests, be passed in favour of the plaintiff and against the defendants, the transaction being commercial transaction. Future interest be also allowed from the date of the suit till realization. A decree for the sale of the mortgaged properties mentioned in para 4 supra, be also passed in favour of the plaintiff and against the defendants giving the defendants a reasonable time to make payment and in case the sale proceeds are found short of the decretal amount, preliminary decree for recovery of the amount from other properties of the defendants be also passed. Such other relief which the court in the facts and circumstances of the case deems fit and proper be also allowed to the plaintiff bank."

7. The operative part of the judgement and decree, dated 1.12.1997, passed by the learned District Judge, is as follows:-

> "In view of my findings on the aforesaid issue the suit of the plaintiff bank is decreed for Rs.1,30,647.10 with proportionate costs and interest at the rate of 12.5

percent per annum with quarterly rests till the realization of the decretal amount. The rate of interest after 18.9.1993 shall be calculated by the plaintiff bank at the rate of 12.5% per annum with quarterly rests and the statement of account shall be prepared in accordance with the same. Thereafter the payment made by the defendant after this date shall be adjusted and the balance amount if any due against him shall be recovered. If the defendant who is alleged to have made payment to the extent of Rs. 4,03,916.00 is found to have made excess payment then the same shall be refunded to him…."

8. On 4.7.2007, this court directed the appellant- bank to file statement of amounts deposited by the respondents after filing of the suit. Sh. H.R.Suri, Branch Manager in compliance to the directions, dated 4.7.2007, filed an affidavit dated 16.7.2007 to the following effects:-

"That the appellant submits that the respondents had deposited a sum of rupees 2,50,000/- on 3.5.1994 out of which a sum of rupees 2,12,000/- was transferred from the Saving bank account of the borrower, another sum of rupees 30,000/- by cash and another rupees 8000/- also by cash. A sum of rupees 11957/- was realized on 16.8.1994 by realization of his cheque. Thus, a sum of rupees 2,61,957/- has been realized by the Bank after the filing of the suit. The amount received will have to be adjusted first towards costs, then interest and thereafter towards principle and appropriated accordingly."

9. The operative part of the impugned judgement and decree would show that the learned District Judge has not

determined the amount as per respective contentions of the parties nor he has passed any decree with respect to mortgaged properties. He has left various amounts to be determined after the decree by the parties. In other words, the decree passed by the learned District Judge is not inconsonance with the requirement of law. The decree has been defined in Section 2 of the Code of Civil Procedure, 1908, which reads as under:-

> " **`decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit** and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include—
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> (a) any adjudication from which an appeal lies as an appeal from an order, or
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> (b) any order of dismissal for default.
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> *Explanation.*—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

10. In the operative part of the judgement, decree there is no conclusive determination of the rights of the parties as per their contentions raised in the suit. It has come on record that some amounts have been paid by the respondents. I am purposely not going into that question, nor those amounts, if paid, how are to be

adjusted with or without interest, in view of the order, which I intend to pass in the present appeal.

11. The trial court is required to go into all contentions raised by the parties and decide the suit in accordance with law, so that if an appeal is filed, the appellate court has the benefit to go into all questions raised in the suit. In the present case, all questions have not been decided by the trial court. The decree is vague. Therefore, in the interest of both the parties, the best course is to remand the case after setting aside the impugned judgement and decree with a direction to the learned District Judge to decide the matter afresh and to determine the amounts due with interest, if any, to the appellant-plaintiff after adjusting the amounts, if any, paid by the respondents. The claim of interest on the amounts paid by respondents is also to be considered and decided.

12. The result of the above discussion the appeal is allowed. The impugned judgement and decree are set-aside and the suit is remanded to the learned District Judge, Una, with a direction to determine the amounts due with interest, if any, to the appellant-plaintiff after adjusting the amounts, if any, paid by the respondents, as per respective contentions of the parties in their pleadings and evidence. The learned District Judge shall also decide the claim of interest raised by respondents on the amounts paid by them. The suit was filed on 20.9.1993, therefore, the learned District Judge is directed to decide the suit expeditiously but before 31.3.2008. The parties through their counsel are directed to appear before the learned District Judge, Una on 29.10.2007. Record be returned so as

to reach the court of learned District Judge, Una well before the date fixed. No costs.

October 10, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**